

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

LUIS BARRAZA-RICHARD MORALES,)	
)	
Plaintiff,)	
)	
v.)	No. 1:05CV200 FRB
)	
DR. GLENN BABICH, et al.,)	
)	
Defendants.)	

ORDER

This cause is before the Court, sua sponte, upon review of the file. The matter was assigned to and is pending before the undersigned United States Magistrate Judge pursuant to Rule 2.08(A) of the Local Rules of this Court.

Plaintiff commenced this action on November 3, 2005. After plaintiff was granted leave to proceed in forma pauperis, his Complaint was filed on March 8, 2006, and the Clerk of Court was ordered to issue process or cause process to issue on various of the defendants named therein. A review of the file shows service of process to have been waived on behalf of defendants Dr. Glenn Babich and C.O. I Burris and counsel to have since entered their appearance for said defendants. Defendants C.O. I Donaldson, C.O. I Parker, Nurse Theresa, and Nurse Jane, all alleged to be employed at Southeast Correctional Center, remain unserved in this cause, nor has service been waived on their behalf.

Under Rule 4(m), Federal Rules of Civil Procedure, the Court, after notice to the plaintiff, is directed to dismiss an action against a defendant upon whom service has not been made within 120 days after the filing of the Complaint. The Rule 4(m) period for service in this cause expired July 6, 2006, 120 days after the filing of plaintiff's Complaint. A review of the file shows, however, that despite requesting a prompt response, the Court was not informed by Correctional Medical Services until July 7, 2006, as to whether it would waive service on behalf of Nurses Theresa and Jane. The undersigned deems it inequitable to hold plaintiff to the July 6, 2006, date for Rule 4(m) service when the status of waiver was not timely communicated to the Court. As such, plaintiff will be granted additional time to effectuate service of his Complaint upon Nurses Theresa and Jane, as well as the other defendants which remain unserved in this cause.

Accordingly,

IT IS HEREBY ORDERED that, **forthwith**, plaintiff shall provide to the Clerk of Court an address at which the United States Marshal may serve each of the following defendants in this cause: C.O. I Donaldson, C.O. I Parker, Nurse Theresa, and Nurse Jane.

IT IS FURTHER ORDERED that plaintiff shall cause service to be effected upon defendants C.O. I Donaldson, C.O. I

Parker, Nurse Theresa, and Nurse Jane not later than **September 15, 2006**. In the absence of good cause shown, failure to effect timely service shall result in the dismissal without prejudice of plaintiff's claims against any unserved defendant.


UNITED STATES MAGISTRATE JUDGE

Dated this 11th day of July, 2006.